An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0497
Sector:	Banking
Product / Service:	Repayment Mortgage
Conduct(s) complained of:	Selling mortgage to t/p provider Failure to implement payment terms
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant entered into two mortgage loan agreements with the Provider in **January 2007** (**Loan 1** and **Loan 2**). A number of lump sum payments totalling approximately €250,000 were made towards Loan 1. Loan 1 was also subject to an interest only arrangement in **2013**, and a part capital and interest restructure arrangement in **2017**. The Complainant is dissatisfied with the fact the lump sum payments, which he considered *prepayments*, were not reflected on his Irish Credit Bureau (**ICB**) credit report. The Complainant is also dissatisfied that his loans were classified as non-performing loans and sold to a third party in **February 2019**.

The Complainant's Case

The Complainant explains that he entered into two mortgage loan agreements with the Provider over 18 years ago in **2007** for over €500,000 and €1,000,000 respectively. These loans were due to be repaid by **November 2022**. He states that one of the loans, on the advice of one of the Provider's managers, was switched to an interest only arrangement, and the other was on principal and interest repayments. The Complainant states that *"I have always kept to the letter of the agreement for both loans."*

The Complainant states that the Provider classified the Complainant's loans as *non-performing* and the loans were sold to a vulture fund. The Complainant advises that he currently owes €500,000 plus €375,000 in respect of his loans but these loans were *well covered* by the assets offered as security.

The Complainant explains that *"[s]ome 4 years ago I asked to be put on interest only for both loans."* In order to do this, the Complainant made a lump sum repayment of €250,000 towards the principal balance on Loan 1. This was considered an *out of course payment* by the Provider. However, the Complainant submits, irrespective of what the Provider called these payments, *"… the monies were credited against the principal, so the fact is I prepaid any principal that would be due over the course of the agreement of interest only."*

The interest only arrangement was renewed in **November 2016** and the Complainant *"… has never, ever missed any interest payment on both loans."* The Complainant remarks that *"I made a big issue out of this at the time so as to let the bank be fully aware that I was not going to be in any arrears or principal shortfall. … I also made an issue out of this fact of principal payment upfront."* The Complainant also made a further offer of a *substantial principal reduction* in the years that followed. In addition to this, the Complainant agreed with the Provider in **November 2016** *"… to the full rent of €2,440 being paid to the bank so it is principal and interest being repaid since November 2016."* This was also made clear to one of the Provider's agents during a telephone conversation on **9 February 2017**. During this conversation, the Complainant took issue with the fact that his *prepayment of principal* was not reflected on his ICB record. Further to this, in a submission dated **4 September 2020**, the Complainant suggests his credit rating has been damaged by the Provider's failure to add a comment to his ICB record reflecting *"… that I had pre-paid principle so my loans were fully compliant."*

The Complainant wishes to make clear that:

> *"1. I have met every single payment to the bank for 18 years.*
>
> *2. I have kept to the letter of any agreement.*
>
> *3. I have prepaid principle so my loans are totally up to date.*
>
> *4. The bank has never sent me a single communication, by letter, phone, email or any other method regarding any deficiency in either of my loans.*
>
> *I do not wish for my performing loans to be included in any sale to a third party."*

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In a further submission dated **24 February 2020**, the Complainant sets out the definition of a non-performing loan as defined by the European Central Bank and *The Financial Dictionary*. The Complainant submits the definition adopted by the Provider is incorrect and, contrary to the Provider's position, is not complex. The Complainant also states that he was never in arrears and certainly not for 90 days, and that one of his loans was redeemed ahead of schedule in **November 2018**.

The Provider's Case

The Provider states that between **August 2010** and **December 2018**, the Complainant made a number of lump sum payments to Loan 1 totalling €337,318.

However, the Complainant did not make any lump sum payments to Loan 2. The Provider advises that it did not issue bespoke correspondence when customers voluntarily chose to make lump sum *pre-payments* to loan accounts and these payments were not made for the purpose of switching Loan 1 to interest only. The Complainant queried the application of his lump sum payments on occasion and the Provider responded in writing in an effort to address the issues raised.

Loan 2 was drawn down in **February 2007** as an interest only facility in the amount of €500,000. The loan remained on interest only repayments for the duration of its term and did not fall into arrears at any time.

On **22 March 2013**, the Complainant telephoned the Provider to query his repayment amount as he felt he did not receive the benefit of the lump sum payments. On **25 March 2013**, the Provider issued correspondence to the Complainant explaining that each month the interest portion of his loan repayment was calculated based on the principal balance outstanding minus any payments lodged as credit to the loan account. On **17 April 2013**, the Complainant telephoned the Provider to express his disagreement with the Provider's letter and requested confirmation that his loan account balance was calculated correctly following the lump sum payments. This was provided on **18 April 2013**.

On **19 August 2013**, the Complainant completed a Standard Financial Statement (**SFS**). The Complainant advised the Provider that one of the secured properties had been placed on the market and expected to achieve a sales price of €200,000. The Complainant also advised that he expected a substantial tax bill from the Office of the Revenue Commissioners, and as a result, requested a reduction in overall monthly expenditure to allow him budget for this.

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The Complainant requested an interest only arrangement for 2/3 years. The Provider consented to the sale on **25 September 2013** on the condition that €187,217.87 be lodged in respect of Loan 1. On **1 October 2013**, the Provider issued a 3 year part capital and interest restructure arrangement to the Complainant. The Complainant did not accept this arrangement as he had concerns regarding his credit rating with the ICB and requested that the Provider review its offer and consider an interest only arrangement.

Following a telephone conversation on **7 October 2013**, the Provider issued a 3 year interest only arrangement to the Complainant on **22 October 2013** in relation to Loan 1. This was signed and accepted by the Complainant on **30 October 2013** and the interest only arrangement was applied to Loan 1 from **1 November 2013**; correspondence was also issued confirming this on **6 November 2013**.

On **21 October 2013**, the Complainant telephoned the Provider to query the benefit of his lump sum payment. The Complainant subsequently wrote to the Provider on **24 October 2013**, reiterating his query. This was responded to by the Provider on **24 October 2013**.

Referring to the Complainant's point that the lump sum payments should be regarded as keeping Loan 1 up to date, the Provider submits this is not correct. The lump sum payments amount to a partial redemption of the loan and, in line with the terms and conditions of the loan, were allocated to reduce the loan balance.

The Provider states it is important to note that while the lump sum payments reduced the principal on Loan 1, these payments did not affect the non-performing classification.

On the expiry of the interest only arrangement, the Complainant submitted an SFS on **17 October 2016** and requested a further interest only arrangement for 2 years. The Provider assessed that a 3 year part capital and interest restructure arrangement was the most appropriate arrangement to suit the Complainant's circumstances. This was issued to the Complainant on **14 November 2016**. The Complainant did not accept this and advised the Provider that he was away until **January 2017**. The Complainant engaged with the Provider in **February 2017** as he had concerns regarding his credit rating with the ICB. On explaining the matter to the Complainant, it is submitted that the Complainant accepted the position.

As a result, the Provider re-issued a 3 year part capital and interest restructure which was accepted by the Complainant. The Complainant continued to meet the terms of the restructure and did not fall into arrears.

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The Provider received correspondence from the Complainant dated **6 February 2017** advising that the restructure arrangement was with his solicitor for review. The Complainant noted that he was not in arrears and asked the Provider to refrain from reporting the restructure to the ICB in light of his repayment record to date. The Complainant issued further correspondence on **9 February 2017** advising that he had signed and accepted the restructure arrangement reiterating his request that his ICB record remain unaffected.

The Provider telephoned the Complainant on **23 February 2017** to discuss the issues raised in his correspondence. The Provider informed the Complainant that the restructure was an amendment to the terms of the loan and the Provider was obliged to report this to the ICB. A further call was made to the Complainant on **27 February 2017** to reiterate the Provider's position. In particular, the Provider explained its obligation to report the loan to the ICB.

In terms of the reporting of the restructure to the ICB, the Provider explains that as the restructure was an amendment to the loan agreement, this was required to be reported to the ICB with an indicator of *T*, meaning 'terms revised' in **March 2017**. This indicator will remain on the Complainant's ICB record for a period of 5 years to indicate that the terms of the loan have been amended.

In a submission dated **10 August 2020**, the Provider states that it is not possible to notify the ICB that a loan account has a credit balance. The Provider communicates with the ICB through indicators which record an account's repayment history. Therefore, the Complainant asserts it is not possible to notify the ICB of surplus lodgements in the manner suggested by the Complainant.

The Provider states that the Complainant's loans were assessed in line with European Banking Authority (**EBA**) guidelines as *"unlikely to pay his credit obligations in full without realisation of collateral"* and therefore classified as non-performing loans. It is stated that loan classifications derive from loan performance criteria set by regulators which the Provider must adhere to.

The specific reason for this classification was the extensive forbearance granted to the Complainant which included a significant interest only period in **October 2013** followed by a long term part capital and interest restructure agreement in **November 2016**, and full principal and interest repayments were not being met for the periods of forbearance meaning a lump sum repayment would be due on maturity.

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The Provider states that it does not unilaterally decide whether a loan is a performing or a non-performing loan. The Provider states that it does not make the rules and that as a regulated entity, it must interpret and apply the relevant rules. It assesses the factual circumstances of each loan against the applicable non-performance rules and guidelines.

The Provider issued correspondence to the Complainant on **2 August 2018** informing him of the sale of his loans. It is submitted that while the performance or non-performance of a loan does not affect the Provider's entitlement to transfer a loan to a third party, the transfer of the Complainant's loans was a transfer of non-performing loans. On **18 October 2018**, the Provider issued a Final Response letter to the Complainant in respect of a formal complaint made on **25 September 2018** outlining the rational for the non-performance classification of the loans.

The Provider states that the Complainant's loans were transferred to a third party on **1 February 2019**. At the time of transfer, neither loan had an arrears balance but, the Provider asserts that from a regulatory perspective, the loans were correctly classified as *Not-Performing Loans* due to the extensive level of forbearance granted. On **2 February 2019**, further correspondence issued informing of the completion of the transfer.

The Complaints for Adjudication

The complaints are that the Provider:

1. Unfairly assessed and/or classified the Complainant's loans as *non-performing*;
2. Wrongfully included the Complainant's loans in a non-performing loan sale;
3. Failed to correctly maintain the Complainant's ICB record; and
4. Failed to effectively communicate with the Complainant.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 19 November 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his e-mail to this Office dated 28 November 2020, a copy of which was transmitted to the Provider for it consideration.

The Provider has not made any further submission.

The Complainant states in his post Preliminary Decision submission:

> *"So, once again I clearly state that my loans were not non-performing and should never have been sold. I therefore ask the Ombudsman to reconsider my case".*

I have now had the opportunity to consider the Complainant's additional submission. Having considered it and all submissions and evidence furnished by both parties to this Office, I have not been persuaded to depart from my position as set out in my Preliminary Decision and I set out below my final determination.

Background

The Complainant entered into two mortgage loan agreements with the Provider on foot of Letters of Approval dated **22 January 2007** (Loan 1) and **15 January 2007** (Loan 2). Loan 1 was subject to capital and interest repayments; while Loan 2 was subject to interest only repayments, as per clause A of the *Special Conditions*, for the first five years.

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The Complainant completed an *Overpayment Options Application Form* dated **26 July 2012** in respect of lump sum payment of €50,000 to Loan 1. This form states that:

> *"…*
>
> *(ii) If you wish to use this lump-sum payment or an existing credit balance on your mortgage account to reduce your mortgage repayments or the term remaining on your mortgage, please complete this section:*
> *…*
>
> *I wish to use my existing credit of €_____*
>
> *(a) to reduce my scheduled monthly repayments to allow me pay over the original mortgage terms □ or*
> *(b) to reduce my original term □ …"*

The Complainant selected option (a).

The second page of the form explains that:

> *"**B. Overpayment Options***
>
> *With overpayment options it's possible to clear your mortgage sooner than originally planned.*
>
> *By making a lump-sum payment or making small increases to your regular repayments, you can reduce the term of your mortgage and the amount of interest you pay.*
>
> *You can also make an overpayment to pay for a payment holiday or to cover the shortfall in previous payments."*

Following a query from the Complainant in respect of the overpayment, the Provider wrote to the Complainant on **25 March 2013**:

> *"Please note that each month the interest portion of your mortgage repayment is calculated based on the principal balance outstanding **minus** any payments in credit. In this respect you have benefited from a lower interest calculation from when the lodgement of €12,000 was made on 31st August 2010 and this has resulted in the exact same effect as if the credit was reduced off the principal balance each month.*
> *…"*

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A further query was made by the Complainant and responded to by the Provider on **18 April 2013**:

> *"… I confirm on 02 August 2012 a capital reduction of €50000 was processed on your account. As a result of this, the principal balance on your loan was reduced from €715,962.31 to €665,962.31.*
>
> *I confirm as a result of the reduction in the principal balance on your monthly repayments were reduced accordingly. I confirm your monthly repayment in July 2012 was €7630.83 and this reduced to €7012.73 in August 2012 following capital reduction. …"*

The Complainant telephoned the Provider on **8 August 2013** requesting to be put on an interest only arrangement as he was expecting a large tax bill. The Complainant was advised to complete an SFS and this would then be assessed by the Provider. The Complainant wrote to the Provider on **13 August 2013** indicating his intention to sell one of the secured properties for approximately €200,000. It was the Complainant's intention to lodge the sales proceeds in reduction of the balances outstanding on his loan accounts. At the second paragraph of this letter, the Complainant states:

> *"I am seeking to have the banks cooperation in having both loans subject to the lodgement of the sum of €250k, and being approximately equal to five years capital repayments, converted to interest only for a term of 5 years for both loans. This in effect means the bank is still up to date with my repayments for both interest and capital. I have always been aware of the need for forward planning so I require clarity and agreement for the period to be equal to that which I have prepaid."*

The Complainant submitted an SFS to the Provider dated **18 August 2013**.

The Provider wrote to the Complainant's solicitor on **25 September 2013** consenting to the sale of the property advising:

> *"[The Provider's] consent is also subject to:*
>
> *…*
>
> *5. A Capital Reduction of €187217.87 being lodged to account number [Loan 1] …*
>
> *…*

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> *7. The attached capital reduction form to be completed and signed by all parties to the mortgage …"*

The attached capital reduction form contained two options: (i) reduce the current monthly instalment or (ii) reduce the term of the loan. I note that a signed copy of this form has not been provided by the parties.

By letter dated **1 October 2013** and following an assessment of the Complainant's SFS, the Provider offered a part capital and interest repayment arrangement in respect of Loan 1. During a telephone call on **7 October 2013**, the Complainant explained he was anxious to maintain his credit rating and that this would not be affected by the restructure. It was explained to the Complainant that the arrangement would result in a *T*, terms revised, being reported to the ICB. The Complainant also explained that he was pre-paying €250,000 against his loans which was ahead of his repayment schedule and wished for this to be reflected on his ICB record. Discussing overpayments, the Complainant explained that he was presented with the option of reducing the term of the loan or reducing monthly payments; and it was monthly payments that the Complainant chose to reduce. However, the Complainant referred to the overpayments as prepayments.

The Complainant completed an *Overpayment Options Application Form* dated **13 October 2013** for an amount of €183,950.

During a telephone call on **14 October 2013**, the Complainant expressed the position that he made a prepayment of €50,000 to his loan account in **2012** and this was not reflected on the *prepayment/arrears* section of his account statement as previously had been the case. However, it was still reflected on the Complainant's loan account statement up to two months prior to this call. The Provider's agent explained that it was not a prepayment but a payment which reduced the capital balance on his loan. The Complainant also queried if his overpayment form had been received, advising the Provider's agent that this was the third such form submitted as the Provider had lost the previously submitted forms.

The Provider wrote to the Complainant on **22 October 2013** offering a 3 year interest only arrangement in respect of Loan 1, which was accepted on **30 October 2013**. An *Important Information* document was enclosed with this letter.

This document outlines that:

> *"When you have an Interest-Only mortgage your monthly payments to us do not include any repayment of the principal balance. As a result, your regular monthly payment includes only the interest on that amount.*

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> ***Warning: Your current principal balance will still be outstanding at the end of the interest-only period.*** *…"*

In or around **23 October 2013**, the Complainant made a query regarding the treatment of his lump sum payments. The Provider responded on **24 October 2013** outlining the manner in which each of the lump sum payments made between **August 2010** and **August 2012** were treated and the effect these payments had on the outstanding loan balance and monthly repayments.

The Provider wrote to the Complainant on **12 September** and **5 October 2016** to advise him of the upcoming expiry of the interest only arrangement which was due to expire on **1 November 2016**. The Complainant had a meeting with the Provider and completed an SFS on **17 October 2017**. A part capital and interest restructure arrangement was offered to the Complainant on **14 November 2016** in respect of Loan 1. This letter advised, among other matters, that:

> *"… This Agreement may be reported to the ICB as a change to the terms of your mortgage and this may affect your future ability to borrow. …"*

The enclosed restructure agreement, which was accepted on **8 February 2017**, contained an identically worded provision.

The Complainant wrote to the Provider on **6 February 2017** as follows:

> *"… The paperwork is currently with my solicitor for advice and it seems that there is no issue. I have no problem at all in having the rent, as agreed, from the apartment remitted to [the Provider].*
>
> *I wish to make something very clear, as pointed out by my solicitor. I am, nor ever have been in arrears with this or any other loan from [the Provider]. Indeed, I have repaid previous loans with [the Provider] ahead of time.*
>
> *The bank regards my previous payments as "out of course Payments". This was not what they were called at the time. There were pre-payments of my loan and total near to €250,000. …*
>
> *I would like confirmation that this arrangement will not be lodged with the ICB which would affect my excellent and unblemished credit rating. Again, my payments were pre-payments, so my loans are preforming as originally agreed."*

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A similar sentiment was conveyed by the Complainant in a further letter dated **9 February 2017**. The Provider telephoned the Complainant on **10 February 2017** to discuss his previous correspondence. In terms of the Complainant's credit rating, the Provider's agent advised that the restructure would be reported to the ICB and outlined the Provider's reporting obligation. The Complainant also referred to the reporting difficulty where his *prepayments* were not reflected on his ICB record. The Complainant did not want an interest only arrangement being reported to the ICB as it was not *factually correct*. The Complainant was advised that it was not possible to report out-of- course payments/prepayments to the ICB. The Provider explained the manner of its reporting to the ICB with the Complainant during a further telephone call on **23 February 2017**. The Complainant also advised the Provider's agent that he had been in contact with the ICB regarding the matter. The Provider confirmed the restructure arrangement by letter dated **10 March 2017** which included a statement regarding the reporting of the restructure to the ICB.

The Provider notified the Complaint of the sale of each loan under separate letters dated **2 August 2018**. The Complainant expressed his dissatisfaction with the Provider's decision to sell the loans by letter dated **25 September 2018**. The Provider appears to have treated this letter as a complaint and acknowledged it as such on **2 October 2018**. A Final Response letter was issued on **18 October 2018**. I note the following parts of this letter:

> *"… The Bank is required by regulators to reduce the percentage of loans which are classified as Non-Performing Loans ("NPLs"). The sale of loans to [the Purchaser] is being undertaken in order to meet those regulatory requirements.*
>
> *The definition of NPL is complex, but for regulatory purposes it generally describes a loan that is or has been in arrears, or which has been restructured with a large payment falling due at maturity of the loan.*
>
> *… The Bank does not have a general discretion to remove loans from this legal agreement. The transfer of your loans will take place no sooner than two months after the date of the letter notifying you of the transfer. …*
>
> *As you have received a letter from us indicating that your loans are included in the sale, they have been classified as an NPL according to regulatory definitions. Although you are engaging in an arrangement with the Bank, your loans are still classified as non-performing based on the regulatory definition of having a restructure arrangement on a Buy-To-Let loan which is classified as NPL. …"*

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The Complainant completed an *Overpayment Option 1 Application Form* dated **7 December 2018**. The option chosen on this form was *"To reduce my scheduled monthly repayments to allow me to pay over the original term …"*

Analysis

The Complainant considers the lump sum payments to have been prepayments of the principal/capital balance of Loan 1, in particular while it was subject to the interest only arrangement. The Provider's position is that they were partial redemption payments. Having considered the evidence in this complaint, I do not accept that the lump sum payments were any sort of prepayment as contended by the Complainant. The effect of these payments was to reduce the amount outstanding on Loan 1, which, at the Complainant's option, reduced his monthly repayments under this loan.

The Provider has certain ICB reporting obligations in respect of customers' loans. For example, when an alternative repayment arrangement is entered into in respect of a loan account, this is reported to the ICB. The Complainant entered into two arrangements with the Provider in respect of Loan 1: an interest only arrangement and a part capital and interest restructure. These arrangements were required to be reported to the ICB. Loan 1 was reported to the ICB as *T*, terms revised. The Complainant is dissatisfied with the Provider's reporting as it did not accurately reflect the performance/repayment history of Loan 1, particularly as he states that it did not take into account the various lump sum payments. The Complainant was aware of the manner in which the arrangements were going to be reported to the ICB and this was explained in correspondence and during a number of telephone conversations. The Provider was not in a position to report the Complainant's lump sum payments to the ICB as there was no option or indicator which permitted it to do so. Further to this, the Provider could not create new indicators nor could it publish a statement to this effect on the Complainant's ICB record. In such circumstance, I accept that the Provider correctly reported Loan 1 to the ICB, and I do not accept that the Complainant's ICB record was incorrectly maintained because the lump sum payments were not reported to or reflected on his ICB record. Additionally, I accept that the Provider made reasonable efforts to communicate with the Complainant regarding his queries and concerns in respect of its credit reporting.

The Provider classified both loans as non-performing by reference to the EBA definition outlined in the Provider's Formal Response. The Provider submits that the definition is somewhat complex and takes into account a number of factors, not just arrears.

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The Provider maintains that the Complainant's loans are non-performing due to the alternative repayments entered into and that collateral realisation would be required to discharge the loans. The Complainant believes that as his loans were never in arrears, they should not be classified as non-performing.

The Provider has certain regulatory obligations regarding non-performing loans, and as such, must determine whether or not loans are performing or non-performing. ***Commission Implementing Regulation (EU) 680/2014*** deals with non-performing loans. In particular, paragraph 145 of Annex V contains the following definition:

> *"145. … non-performing exposures are those that satisfy either or both of the following criteria:*
>
> *(a) material exposures which are more than 90 days past-due;*
>
> *(b) the debtor is assessed as unlikely to pay its credit obligations in full without realisation of collateral, regardless of the existence of any past-due amount or of the number of days past due."*

As can be seen, a loan does not have to be in arrears in order for it to be classified as non-performing.

Taking the evidence into consideration, I accept that it was not unreasonable for the Provider to classify Loan 1 as non-performing. It also seems to be that case that Loan 2 was classified as non-performing. However, very little evidence has been presented in respect of Loan 2. It appears that Loan 2 was subject to an interest only arrangement for the first five years and that this arrangement continued until the loan sale. The Provider's submissions are essentially directed towards the classification of Loan 1 and it appears the Provider may have relied on the grounds advanced in respect of Loan 1 as supporting a classification of Loan 2 as non-performing. In these circumstances and on the basis of the evidence furnished, I am not satisfied that it was reasonable for the Provider to classify Loan 2 as non-performing. Furthermore, while the Provider made such classifications, the Provider does not appear to have notified the Complainant that his loans were being classified as non-performing. I think it is reasonable to expect the Provider to have written to the Complainant to bring such matters to his attention.

Separately, the Provider has made very general statements in respect of its legal and regulatory obligations in terms of non-performing loans. In its Formal Response, the Provider has not identified the precise source of its obligations and has simply cited a small and unidentified passage from the EBA guidelines which have not been properly cited or identified.

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I do not consider this an adequate response and the Provider should have clearly identified and set out its regulatory obligations and the legal provisions underpinning those obligations.

In terms of the Provider's transfer of the Complainant's loans, it is important to note that this Office can investigate the procedures and conduct of the Provider but it will not investigate the sale or transfer of a mortgage loan to a third party which is a matter within the commercial discretion of the Provider generally conferred on it by the terms and conditions of a mortgage loan agreement. This Office will not interfere with the commercial discretion of a financial services provider unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant.

Clause 1.15 of the *General Mortgage Loan Approval Conditions* states that the Provider *"… may at any time transfer the benefit of the Mortgage to any person or company in accordance with the Mortgage Conditions."* Further to this, clause 6.7 of the *Mortgage Conditions* states that the Provider *"… may at any time (without the consent of the Mortgagor) transfer the benefit of the Mortgage to any person …."* It is clear from this Clause that the Provider was entitled to sell the Complainant's loans irrespective of whether they were classified as performing or non-performing.

The Provider was not obliged to obtain the consent of the Complainant prior to the sale of his loans. Furthermore, I accept that the Complainant was given appropriate notice of the sale.

Finally, as noted above, a telephone call took place on **14 October 2013**. Having considered the content of this call, I am not entirely satisfied that the Provider's agent dealt with the Complainant in an appropriate manner. In particular, it appears, when transferring the Complainant to the Mortgage Support department, the Provider's agent remarked *"… he's a real idiot …."* It is not entirely clear if the Provider's agent was referring to the Complainant. However, I am satisfied it is likely that she was. While the Provider's agent may have found this call somewhat frustrating, it is highly unprofessional to speak about a customer in this manner.

For the reasons outlined in this Decision, I partially uphold this complaint and direct the Provider to pay a sum of €2,000 in compensation to the Complainant.

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Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2)(b), (d), (f) and (g).***

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €2,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with ***Section 60(8)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

9 December 2021

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Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address, and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.